

August 21, 2018

Mr. Henry Leskinen
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, MD 21057

Re: Morerick-Fox Property
Forest Conservation Variance
Tracking #01-18-2786

Dear Mr. Leskinen:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on August 9, 2018. The request seeks a variance to impact four specimen trees in order to develop a residential three-lot subdivision. One single family home and garage already exist on the property, and the construction of two additional homes on the two new lots is proposed. Three of the four specimen trees proposed for removal are within forest. The four specimen trees to be removed include: a 59-inch DBH black walnut in fair condition, a 35-inch DBH white ash in poor condition, a 31-inch DBH white ash in good condition, and a 45-inch DBH tulip poplar in good condition. There are no other specimen trees on the property.

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The applicant is seeking to subdivide the property into three lots to construct two new single family dwellings in addition to the existing home. As the property is already functioning as a single lot with a single family home, and the proposed development could be reduced to one proposed house to save three of the four specimen trees, full application of the law would not deprive the applicant of all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due to the locations of the four specimen trees relative to the buildable area rather than general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of single-family homes of similar density to that proposed for the subject property. As such, the construction of two additional homes will not alter the essential character of this neighborhood. Therefore, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The project will not impact any wetlands, streams, or associated buffer areas. As a result, this Department finds that the proposed variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although four specimen trees are to be removed in addition to the clearing the entire 0.5 acre of forest, this forest is small, and isolated by development. Furthermore, the petitioner has requested to fulfill reforestation requirements through the purchase of 0.7 acre of credit in a forest retention bank. Therefore, this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code and this criterion has been met.

Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code contingent on the following conditions:

1. Mitigation for the removal of the 59-inch DBH black walnut is required, given its fairly good condition and its location outside the forested area. Mitigation will be addressed by a payment of a \$3,074.16 fee by November 21, 2018 or prior to EPS approval of the minor subdivision, whichever comes first. Note that no additional

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mitigation is required for the specimen trees located in the forested area, given they are in forest to be mitigated in accordance with Sections 33-6-111 and 33-6-112 of the Forest Conservation Law.

2. The following note must be on all subsequent plans for this development project:

“A variance was granted on August 21, 2018 by Baltimore County Dept. of Environmental Protection & Sustainability to allow impact to four specimen trees. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met including paying a fee in lieu of mitigation for specimen tree impacts.”

3. This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County’s Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Deputy Director

DVL/lbe

- c. Ms. Marian Honecny, Maryland Dept. of Natural Resources

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I/we agree to the above conditions to bring my/our property into compliance with
Baltimore County's Forest Conservation Law.

Owner's Signature

Date

Printed Name